

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 3 BUSINESS ASSOCIATIONS
PART 1 GENERAL PROVISIONS

12.3.1.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[12.3.1.1 NMAC - N, 7-15-05]

12.3.1.2 SCOPE: This rule applies to all domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations and foreign business trusts, unless exempted by law.
[12.3.1.2 NMAC - N, 7-15-05]

12.3.1.3 STATUTORY AUTHORITY: NMSA 1978 Sections 8-8-4, 14-15-1 to 14-15-6, 14-16-1 to 14-16-19, 39-3-1.1, 53-2-11, 53-18-1, and 53-19-66.
[12.3.1.3 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.4 DURATION: Permanent.
[12.3.1.4 NMAC - N, 7-15-05]

12.3.1.5 EFFECTIVE DATE: July 15, 2005, unless a later date is cited at the end of a section.
[12.3.1.5 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.6 OBJECTIVE: The purpose of this rule is to set forth general provisions governing corporate and certain legislatively mandated entities in New Mexico.
[12.3.1.6 NMAC - N, 7-15-05]

12.3.1.7 DEFINITIONS: In addition to the definitions in NMSA 1978 Sections 3-29-2, 53-4-1, 53-7-19, 53-8-2, 53-11-2, 53-19-2, 53-20-2, as used in these rules:

- A. biennial** means every other year;
 - B. bureau** means the corporations bureau of the public regulation commission;
 - C. commission** means the public regulation commission;
 - D. director** means the director of the administrative services division or his designee;
 - E. division** means the administrative services division of the public regulation commission;
 - F. person** means an individual, general partnership, limited liability company, limited partnership, trust, estate, association, corporation or any other legal entity;
 - G. these rules** means the rules adopted by the commission in Title 12, Chapter 3 of the New Mexico Administrative Code.
- [12.3.1.7 NMAC - N, 7-15-05]

12.3.1.8 COMPLIANCE WITH LAW: All corporations and other regulated entities shall comply with these rules and all applicable state laws and rules.
[12.3.1.8 NMAC - N, 7-15-05]

12.3.1.9 REQUIREMENTS FOR FILED DOCUMENTS: In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the commission shall be filed with the bureau as follows.

- A. Address for filing documents.**
 - (1) Documents filed by mail shall be sent to the New Mexico Public Regulation Commission Corporations Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.
 - (2) Documents filed in person or by delivery service shall be delivered to the New Mexico Public Regulation Commission, Corporations Bureau Filing Desk, P.E.R.A. Building, Room 346, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501.
 - (3) The commission's official website shall include a list of the types of documents that may be filed electronically and shall, when feasible, include forms for such documents.
- B. Required format.** All reports, articles, applications and other documents filed with the commission shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch

margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink. The bureau will accept for filing documents or certificates provided by foreign jurisdictions on paper that is of another size.

C. Good standing required. A corporation or other legal entity may not file, and the bureau will not accept, any document unless the corporation or entity is in good standing. For purposes of this subsection, good standing means the corporation or entity has timely filed all required reports and has paid all assessed fees, penalties, and interest.

D. Electronic filing and requests by facsimile. Documents filed electronically will be accepted as long as the commission's web-posted list includes the type of document being filed electronically, the document being filed electronically originated as a form on the commission's official website, and the filing is made through the commission's official website, at www.nmprc.state.nm.us. Any person may obtain a current telephone number for facsimile filing, and may make requests, by calling the bureau at 505-827-4508. The bureau will accept documents filed by facsimile or electronic means in the following situations:

- (1) when a certificate of good standing and compliance is received from the appropriate official of another state or country, for the purpose required by NMSA 1978 Sections 53-8-69, 53-17-6, and 53-19-48, provided that the certificate is sent directly to the bureau by the appropriate official;
- (2) requests for certificates, certified copies, or other documents pursuant to 12.3.1.13 NMAC; and
- (3) requests for forms pursuant to 12.3.1.10 NMAC.

E. Date of filing. The commission shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the bureau, unless the document is returned pursuant to 12.3.1.11 NMAC except that:

- (1) if a report required by the Corporate Reports Act, NMSA 1978 Sections 53-5-1 through 53-5-9, is mailed to the commission, the commission shall add three days to the postmark date for purposes of NMSA 1978 Section 53-5-7; and
- (2) if the commission receives a document after regular business hours, the commission shall stamp and consider it received on the next regular business day.

F. Filing fees. The commission shall not accept any document for filing unless it is accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC.

G. Expedited filing fees.

(1) **Expedited request form required.** Each application for expedited filing shall be accompanied by an expedited request form provided by the bureau.

(2) **Nonrefundable separate payment required.** All expedited filing fees are nonrefundable. Each nonrefundable expedited filing fee shall be paid by separate payment in addition to all other filing fees required by law.

(3) **Expedited filing fee schedule.** The commission shall accept applications for expedited filing according to the following fee schedule.

(a) **Same business day filing.** For a \$150.00 expedited filing fee, the commission shall process an application for an expedited filing on the same business day the application is received by the bureau if the application is received by the bureau before 2:00 p.m. If an application for an expedited filing fee is received by the bureau after 2:00 p.m., the commission shall process the application for expedited filing by the end of the next business day for the same \$150.00 expedited filing fee.

(b) **Two business days filing.** For a \$100.00 expedited filing fee, the commission shall process an application for an expedited filing within two business days of the date on which the application for expedited filing is received by the bureau.

(4) **Refund for failure to timely process.** If the bureau is unable to provide the requested expedited filing service, the bureau shall return the expedited filing fee to the applicant for expedited filing services.

H. Required addresses. All reports filed by corporations and other regulated entities shall include the street address of the registered office and addresses for each of the entity's directors and officers. The report shall clearly indicate the titles of all officers and directors.

I. Electronic signature. A person submitting an electronic filing shall verify at the time of submission the complete name and title of the person filling out the form, a statement that such person has lawful authority to submit the report, a statement that the report is true and correct under penalty of perjury, and the date the report is submitted.

[12.3.1.9 NMAC - N, 7-15-05; A, 12-15-09; A/E, 3-25-10; A, 11-30-11]

12.3.1.10 COMMISSION-PRESCRIBED FORMS:

A. Use required. The commission has prescribed forms required by law to carry out certain requirements of these rules. The most current version of a commission-prescribed form must be used when a form exists for that purpose, unless these rules state otherwise or the commission waives this requirement. When a document is filed electronically, the form provided by the commission on its website must be used.

B. Use optional. The commission has available for use optional forms that may be used to comply with the requirements of these rules and strongly prefers the use of such forms for ease and consistency of data entry. However, except when electronic filing is used, a corporation or other entity may instead file the information and documents required by these rules in the order in which they are listed in the applicable statute or these rules.

C. How to obtain. Interested parties may obtain copies of commission-prescribed forms and other optional forms:

(1) on the commission's website at www.nmprc.state.nm.us;

(2) by electronic request to the bureau on the commission's website, by clicking on "corporations" and then "corporations inquiry;"

(3) by calling the bureau at 505-827-4508; or

(4) by writing to the New Mexico public regulation commission, corporations bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269

[12.3.1.10 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.11 INCOMPLETE FILINGS:

A. Criteria. A filing will be considered incomplete if:

(1) it is unsigned;

(2) it omits any information required by law or commission rule or order;

(3) it is not submitted on a commission-prescribed form and a form is required for that purpose;

(4) it is not accompanied by the appropriate filing fee, paid as required by **12.3.1.14** NMAC; or

(5) the commission determines the filing is otherwise insufficient.

B. Return of incomplete filings. The director shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

(1) the address on any cover letter included with the form or document;

(2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;

(3) if no cover letter or envelope return address were included, then to the address on any check delivered with the form or document for filing; and

(4) if none of the above were included, then to any other address in the file for the entity involved.

[12.3.1.11 NMAC - N, 7-15-05]

12.3.1.12 REVIEW OF DOCUMENTS: Any person who wishes to inspect public records or other documents relating to corporations or other regulated legal entities shall file a written request to the bureau as provided in **12.3.1.9** NMAC. The request shall meet the requirements of the Inspection of Public Records Act, NMSA 1978 Section 14-2-8 and shall follow the procedure required by that law.

[12.3.1.12 NMAC - N, 7-15-05]

12.3.1.13 REQUESTS FOR COPIES AND RECORD SEARCHES:

A. Types of documents available. The bureau may provide the following:

(1) a certificate of good standing and compliance;

(2) a miscellaneous certificate as requested by a corporation or other regulated legal entity;

(3) certified copies of reports, instruments or other documents relating to a corporation or other regulated legal entity;

(4) non-certified copies of reports, instruments or other documents relating to a corporation or other regulated legal entity; or

(5) reports of record searches for categories of documents or other types of information.

B. Filing of request. A person shall make a request in writing for copies of a document or a record search report and shall list all documents or information requested. A request may be mailed or delivered to the bureau, or faxed or filed electronically pursuant to **12.3.1.9** NMAC. If a person cancels a request within twenty-four (24) hours, the bureau shall not assess any fees.

C. Estimate of fees. When the bureau receives a request, the bureau shall issue an informal estimate of fees.

(1) The estimate of fees for copies shall be as prescribed in NMSA 1978 Section 53-2-1.

(2) The fee for a record search report shall be a minimum of sixty dollars (\$60.00) pursuant to the fee schedule approved by the department of finance and administration.

D. Completion of request.

(1) If the person approves the estimate, the bureau shall prepare the copies or record search report within ten (1) business days. The director may approve expedited requests on a showing of good cause.

(2) When the requested documents are ready, the bureau shall provide a written or electronic statement of fees due and shall release the copies or record search report electronically, by email or in hard copy, as requested, upon payment of all fees due.

[12.3.1.13 NMAC - N, 7-15-05]

12.3.1.14 PAYMENT OF FEES: A person shall pay fees charged by the commission by paper instrument or money order, or electronic check, from funds on deposit with a United States financial institution, made payable to the New Mexico public regulation commission. The commission may permit, subject to appropriate approvals from the New Mexico state treasurer or the New Mexico board of finance as appropriate, payments by debit card or credit card, plus a convenience fee as may be required by law. Any convenience fee to be charged to the commission by the commission's designated fiscal agent shall be passed through to the person submitting the filing.

[12.3.1.14 NMAC - N, 7-15-05; A/E, 3-25-10]

12.3.1.15 PROCEDURES FOR CHOOSING A NAME: Corporations and other regulated legal entities shall comply with statutory name requirements, and may use the procedures in this section for checking the availability of a name, reserving a name, or applying for a corporate or company name.

A. Informal inquiry about name availability. A corporation or other regulated legal entity may informally request, orally or in writing, that the bureau determine whether a proposed name is available. The bureau shall search its records to determine whether the proposed name is the same as, or confusingly similar to, the name of another corporation or other regulated entity previously on file, reserved, or registered with the commission.

B. Formal application for a name. The bureau shall not make a final determination of whether a proposed name is available until the corporation or other entity files with the bureau an application to reserve a specified name, articles of incorporation, an application for a certificate of authority, or other organizational documents.

C. Reserving a name. A corporation or other legal entity may file an application with the bureau to reserve a proposed name. If the bureau determines the name is available, it shall reserve the name for the corporation or other legal entity for one hundred twenty (120) days. An applicant may not extend the time period of a name reservation.

D. Registering a name. A foreign profit corporation may register its name by complying with NMSA 1978 Section 53-11-9, and may renew its name registration by meeting the requirements of NMSA 1978 Section 53-11-10.

E. Administrative revocation and reserving a name. If the commission administratively revokes a corporation or other legal entity, it shall reserve its name for the period allowed by law for reinstatement. If a corporation or other legal entity that has been administratively revoked applies for reinstatement in compliance with applicable requirements, the commission shall grant reinstatement and restore the entity's exclusive right to its name.

F. Waiver of right to a name. A corporation or other legal entity may waive its right to its name by filing a statement with the commission that the entity waives its exclusive right to its name. Once the commission receives such a waiver, it may release the name of the corporation or other legal entity for use by another. If the original corporation or other legal entity then wants to reinstate, it must do so under another name.

[12.3.1.15 NMAC - N, 7-15-05]

12.3.1.16 RULES OF PROCEDURE: In all matters before the commission involving corporations or other legislatively mandated entities, the commission shall follow the commission rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission rules of procedure.

[12.3.1.16 NMAC - N, 7-15-05]

12.3.1.17 APPEALS: A person, corporation or other legal entity aggrieved by any decision of the bureau, director, or commission made pursuant to these rules may appeal the decision to district court in accordance with NMSA 1978 Section 39-3-1.1 except that appeals concerning the Corporate Reports Act shall be made pursuant to

NMSA 1978 Section 53-5-7.
[12.3.1.17 NMAC - N, 7-15-05]

HISTORY OF 12.3.1 NMAC.

Pre-NMAC History. The material in this part was derived from that previously filed with the state records center: Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

History of Repealed Material.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by **12.3.1** NMAC, Business Associations - General Provisions, effective 7-15-05.